TRUSTS — CREATION AND VALIDITY — ANNUITY CONDITIONED UPON CONTINUED SEPARATION FROM HUSBAND. — The testator by his will directed trustees to pay an annuity to A, his mistress, provided and so long as she should not return to live with her present husband and should not remarry. A was living apart from her husband at the time of the execution of the will and the death of the testator. *Held*, that the trust be carried out according to its terms. *Sparks* v. *Southall*, 54 L. J. 362.

Conditions in testamentary dispositions in limited restraint of marriage are not void as contrary to public policy. *Jenner* v. *Turner*, 16 Ch. D. 188; *Reuff* v. *Coleman*, 30 W. Va. 171, 3 S. E. 597. A testator who leaves a fund in trust for a legatee "during such period as she shall remain unmarried" is understood not to be aiming at a restraint of marriage, but rather to providing for the support of the legatee until such time as she shall be married. *Jones* v. *Jones*, 1 Q. B. D. 279; *Trenton Trust Co.* v. *Armstrong*, 70 N. J. Eq. 572, 62 Atl. 456. But a bequest to a married woman living with her husband, to take effect upon her separation from him (by his death or otherwise), may well be frowned upon as tending to disturb the harmony of the marital relation. *In re Moore*, 39 Ch. D. 116; *Conrad* v. *Long*, 33 Mich. 78. Yet even such bequests have been held valid when it is clear that the testator's sole motive was to provide for the legatee in case she should be left alone. *Thayer* v. *Spear*, 58 Vt. 327, 2 Atl. 161; *Coe* v. *Hill*, 201 Mass. 15, 86 N. E. 949. In the principal case, the woman was not living with her husband at the time of the execution of the will nor at the testator's death, and, in such a situation, courts will generally impute to the testator an intention primarily to provide the legatee with maintenance until some spouse should undertake that duty. *In re Charleton*, 55 Sol. J. 330; *Dusbiber* v. *Melville*, 178 Mich. 601, 146 N. W. 208. The further fact in the principal case that the beneficiary was the testator's mistress is not, in the absence of statute, sufficient to make the bequest void as against public policy. *Sunderland* v. *Hood*, 13 Mo. App. 232. See PAGE, WILLS, § 24.

TRUSTS — CREATION AND VALIDITY — *CESTUI QUE TRUST* AS TRUSTEE OF A SPENDTHRIFT TRUST. — The testatrix devised the residue of her property to her executor, impressed with a spendthrift trust, the income to be paid to her husband for his life and then to her two children. The husband was named as sole executor. Although no misconduct on the part of the executor was shown, it was sought to declare the trust invalid. *Held*, that the trust was valid. *In re Fox's Estate*, 107 Atl. 863 (Pa.).

Spendthrift trusts under which the creator deprives himself of all power over the principal have always been valid in Pennsylvania. *Rife* v. *Geyer*, 59 Pa. St. 393; *Shankland's Appeal*, 47 Pa. St. 113. Where, however, the sole trustee is also *cestui que trust* for life, it has been said that during his life there is a merger of the legal and equitable estates. See *Wills* v. *Cooper*, 1 Dutch. (N. J.) 137, 164; *Rose* v. *Hatch*, 125 N. Y. 427, 431, 26 N. E. 467, 468. But where one of several trustees is also *cestui que trust* for life, it is clear there is no merger. *Story* v. *Palmer*, 46 N. J. Eq. 1, 18 Atl. 363. See *Robertson* v. *de Brulatour*, 111 App. Div. 882, 902, 98 N. Y. Supp. 15, 28. Likewise there is no merger where one of several *cestuis que trustent* is himself sole trustee. *Woodward* v. *James*, 115 N. Y. 346, 22 N. E. 150. A merger, then, results only where all legal and equitable rights under the trust are settled upon one person, so that no one can question his disposition of the property. Where, as in the principal case, equitable remainders are created which limit the trustee-*cestui's* power of disposition, there is, by the weight of authority, no merger during his life. *Nellis* v. *Rickard*, 133 Cal. 617, 66 Pac. 32; *Losey* v. *Stanley*, 147 N. Y. 560, 42 N. E. 8. See *Spengler* v. *Kuhn*, 212 Ill. 186, 193, 72 N. E. 214, 217. In view of the prevalence of spendthrift trusts in those states where they are valid, there would seem to be no reason for holding that because a man is *cestui que*

trust under such a trust he is thereby to be considered too untrustworthy to act as trustee, nor has such a view been taken. *Cf. Nichols* v. *Eaton*, 91 U. S. 716.

TRUSTS — CREATION AND VALIDITY — MERITORIOUS CONSIDERATION FOR EXECUTORY PROMISE. — The testator executed an instrument, referred to by the court as a deed of trust, wherein he promised, for himself and his executors, to pay to the plaintiff, his wife, from whom he was living apart, a fixed annuity during her lifetime. As security for the performance of his promise he conveyed certain property in trust for her. This property proved insufficient for the maintenance of the annuity, but the testator supplied the deficit while he lived. The plaintiff sought to have the trust fund increased from the estate to an amount large enough to support the annuity. *Held*, that the estate is liable. *In re Hoffman's Estate*, 177 N. Y. Supp. 905 (Surr. Ct.).

The weight of American authority is that meritorious consideration is enough to turn an imperfect gift into a valid declaration of trust. See SCOTT, CASES ON TRUSTS, 151. But the law is fairly well settled that such consideration is not sufficient to support an executory promise. *Matter of James*, 146 N. Y. 78, 40 N. E. 876; *Landon* v. *Hutton*, 50 N. J. Eq. 500, 25 Atl. 953. *Contra*, *Crawford's Appeal*, 61 Pa. St. 52. Nor does the creation of a trust for the security of the promise seem to afford any reason for changing the rule when the security proves insufficient. Equity has gone far in turning an imperfect gift into a contract when substantial consideration has been given in form only. *Ferry* v. *Stephens*, 66 N. Y. 321. See Roscoe Pound, "Consideration in Equity," 13 ILL. L. REV. 667, 671. But here no consideration is mentioned. It would seem that the case could not be supported except on the theory that the testator declared a trust of all his property to pay the annuity. Such a trust, while possible, could be established only by strong evidence of intent. *Hickok* v. *Bunting*, 67 App. Div. 560, 73 N. Y. Supp. 967. It might be urged that the payment of the deficit by the testator during his life was such evidence; but this was nothing more than the performance of his promise. The creation of the trust fund is inconsistent with an intent to hold the rest of the property in trust. And the fact that the testator made no attempt to treat the remaining property as a trust *res* would seem to be conclusive. *Ambrosius* v. *Ambrosius*, 239 Fed. 473.

TRUSTS — INFANT TRUSTEE — COMPELLING EXECUTION OF TRUST. — A named her minor son, B, as beneficiary of her life insurance policy, upon trust, however, to pay her funeral expenses and to keep the excess. A died while B was still an infant and B made arrangements with an undertaker to conduct the funeral. B now seeks to avoid the payment of the undertaker's bill. *Held*, that the bill must be paid. *Amodei's Estate*, 76 Leg. Int. 733.

An infant may be a trustee. *Jevon* v. *Bush*, 1 Vern. 342. See 1 PERRY, TRUSTS, § 54. But because of his common-law disabilities, an infant is not liable *ex contractu*. See POLLOCK, CONTRACTS, Williston's ed., 59. The principal case must therefore go on some other ground than that the claimant is a creditor. It would not be doing violence to the intention of the settlor to say that the trust was for the benefit of any undertaker chosen by the trustee and that when chosen he would be the *cestui que trust*. See 18 HARV. L. REV. 529. Or it could be said that the personal representative of the settlor was the *cestui*, since, were it not for the trust, he would be liable for the reasonable funeral expenses of the deceased. *Patterson* v. *Patterson*, 59 N. Y. 574. In either case there would be the difficulty of compelling the infant to carry out the trust. It has been held that if an infant trustee makes a conveyance which he would have been bound to make upon coming of age, he cannot later disaffirm it. *Anon.* v. *Handcock*, 17 Ves. 383; *Elliott* v. *Horn*, 10 Ala. 348; *Starr* v. *Wright*,